Office-Supreme Court, U.S.
FILED
JUN 8 1960
JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No. 966

G. & K. INVESTMENT COMPANY, *Petitioner*,

v.

GEORGE M. HARRISON, NEWTON BRYANT, MONROE BRYANT, *et als.*

On Petition for a Writ of Certiorari to the Supreme Court of Mississippi

MEMORANDUM FOR THE RESPONDENTS IN OPPOSITION

This is a controversy turning on two questions of Mississippi law, neither of which involves or can be made to involve any issue arising under the Federal Constitution.

1. The first question is whether a husband's right to inherit from a deceased wife is cut off by his subsequent bigamous marriage. Petitioner admits (Pet. 5) that Joseph

Knox married Lucile Brown without having divorced Alpha Bryant. It follows, as a matter of Mississippi law (*Minor* v. *Higdon*, 215 Miss. 513, 61 So. 2d 350), that Joseph Knox could not inherit from Alpha—and such inheritance is the sole foundation of petitioner's present claim.

2. The second question is whether a husband who has himself secured an invalid decree of divorce can thereafter have it set aside. Petitioner admits that Joseph Knox instituted divorce proceedings against Alpha Bryant and obtained a decree (Pet. 5), and that this decree was void (Pet. 6). Under Mississippi law, Joseph Knox cannot have that decree set aside (*Cratin* v. *Cratin*, on suggestion of error, 178 Miss. 881, 896-898, 174 So. 255). Consequently he cannot be declared the surviving heir at law of Alpha Bryant, who died before his lease to petitioner, with the result that petitioner's claim fails on this ground also.

3. Petitioner's efforts to inflate the foregoing issues of state law into issues arising under the Federal Constitution on their face beg the alleged Federal questions.

Thus, petitioner states the Question Presented (Pet. 2) to be:

> "Whether the Supreme Court of the State of Mississippi can *divest* petitioner, an assignee, of property lawfully vested in the original assignor by the Mississippi statute of descent and distribution, by creating a judicial exception to the statute, without violating the due process of law guaranteed to petitioner by the Fourteenth Amendment to the Constitution of the United States?"

We have italicized the word *divest*, because the question, plainly enough, is not whether petitioner can be divested, it is whether petitioner's assignor was ever vested in the first instance. As we have shown, and as the Supreme Court of Mississippi held (Pet. 8a-11a), it is plain that

under the two governing rules of Mississippi law involved, Alpha's interest never vested in Joseph; he was barred by his own acts from inheriting that interest.

A similar question-begging infects petitioner's rhetorical inquiry (Pet. 7),

> "How, within the ambit of the Fourteenth Amendment to the Constitution of the United States, is it possible that property *inherited* by a man from his wife in 1934 in accordance with the statute of descent and distribution of a state can be taken from his ultimate assignee by a court of that state 25 years later?"

Here our italicized word is *inherited;* as a matter of Mississippi law, petitioner's assignor Joseph Knox never inherited anything from his wife Alpha Bryant. He barred himself from any such inheritance by two voluntary acts before she died in 1934, viz., by his bigamous marriage to another woman in 1929 (Pet. 5), and then by his institution of divorce proceedings against Alpha in 1930 (Pet. 5-6).

4. Inasmuch as no substantial Federal question is involved in this case, it seems almost superfluous to point out that even the question now alleged was never properly presented below. Cf. Pet. 3-4. The reply brief which twice mentioned "due process of law" is certified separately and not as a part of the record; no claim of jurisdiction to review can be rested on such a document. E.g., *Lynch v. New York*, 293 U.S. 52, 54. And the order (R. 250-251) allowing petitioner's motion to perfect the record (R. 252-253), by including pleadings filed in the Chancery Court that similarly made vague references to the Fourteenth Amendment, does not show that those pleadings were even before the Supreme Court of Mississippi when it decided the case, much less that this order even remotely constituted a sufficient certificate to show that the Mississippi Supreme Court actually decided a Federal question. *Charleston Assn. v. Alderson*, 324 U.S. 182, 186, note 1.

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5. Accordingly, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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JUNE 1960.